IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13776 of 2003
With
SPECIAL CIVIL APPLICATION No. 14094 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BALKRISHNA CHHOTALAL & 51 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 – Respondent

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Appearance :

MR YN OZA with MR JS YADAV for Petitioner(s) : 1 – 52.
MRS KAVITA J YADAV for Petitioner(s) : 1 - 2.
MR MC SHAH with MR MB PARIKH for Petitioners in S.C.A. No. 14094/2003
MR PR ABICHANDANI, AGP for Respondent(s) : 1 - 2, 4,
MR MEHUL SHARAD SHAH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 28/10/2005

CAV COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Service of rule is waived by Mr. PR Abichandani, Ld. AGP for respondents no. 1, 2 and 4 and Mr. Mehul Sharad Shah, learned advocate for respondent no. 3.

1. Since points to be decided in both these petitions are the same and they arise from the same acquisition proceedings initiated under the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] and reliefs claimed in these petitions are against the same respondents, both these petitions are heard together and now they are being disposed of by this common CAV Judgment, which will govern both these petitions.

2. The short facts are as under :-

2.1. Petitioners are the owners of business premises/shops which are situated on the road running between places called Krishna Cinema and Bhamariya Nala at Mehsana. The length of the road is about 800 mtrs. to 1000 mtrs. The existing width of the road is 28 ft. which is to be increased upto 40 ft. and,

therefore, the respondent – Municipality passed resolution dated 23rd July, 1999 proposing to widen the road. It is the say of the petitioners that their shops are situated on the west side of road and they are there for more than 40 years. The petitioners, therefore, decided to challenge the resolution before respondent no. 2 – the Collector, District Mehsana and necessary proceedings were filed in November 1999. It is the case of the petitioners that without giving due consideration to the grievances made by the petitioners, respondent no. 2 rejected application of some of the petitioners on 24th November, 1999. The ground on which respondent no. 2 rejected the application was that the land on which the shops of the petitioners are situated was required for a public purpose, namely widening of the road and hence no challenge to it was maintainable under section 258 of the Gujarat Municipalities Act ['Municipalities Act' for short]. Being aggrieved by the said decision of respondent no. 2, the petitioners preferred application before the State Government, but the State Government was of the opinion that it was administrative decision of the Collector and not a decision under section 258 of Municipalities Act, hence no revision could be entertained. Respondent no. 2, in the meanwhile, passed amended order under section 258 dated 11th April, 2000 rejecting the prayer of the petitioners. The amended order was again challenged before the Government by the petitioners being Revision Application No. 115 of 1999.

2.2. It is the case of the petitioners that even while the question was under consideration, respondent no. 1 issued notification under section 4 of the Act on 12th June, 2002. The objections were invited. According to the petitioners, since the objections filed under section 5-A of the Act by the petitioners and other similarly situated persons did not receive proper consideration and also in view of the fact that the proceedings filed before the State Government were simultaneously in progress, the petitioners approached this Court by filing petition being Special Civil Application No. 1285 of 2003. This Court gave direction to respondent no. 1 – State to expedite the proceedings pending before it and to give its decision therein. It appears that the Government decided the matter and remanded the case again to respondent no. 2. The order of the Government is dated 22nd March, 2003. In the said order the State Government observed that respondent no. 2 should ascertain whether it was absolutely necessary, keeping in view the traffic problem faced by the town on the road in question, to widen the road and that decision be taken after hearing all the affected persons. The Collector again by his order dated 15th July, 2003 upheld the resolution of respondent – Municipality dated 23rd July, 1999 and made order rejecting the request of the petitioners.

2.3. The grievance of the petitioners was and is that they did not have any objection to widening of the road, but for that purpose only the land situated on the side of petitioners' shop should not be acquired, but the acquisition should be equal on both the sides of the road keeping in view the center line. According to them, it is colourable and malafide exercise of power since the decision to acquire land on petitioners' side alone is taken solely with a view to favour a particular group of persons.

2.4. Declaration under section 6 of the Act displaying the satisfaction of the Government regarding the necessity of acquisition of land for a public purpose was issued and published in the Official Gazette dated 1st August, 2003. It was thereafter, published in the newspaper on 18th August, 2003. Thus, the petitioners have now in this petition challenged the said acquisition proceedings. These are the facts of Special Civil Application No. 13776 of 2003.

3. So far the facts of Special Civil Application No. 14094 of 2003 are concerned, they are more or less similar. According to these petitioners, they were given permission dated 6th January, 1999 to put up construction of survey nos. 3865, 3866, 3891 and 3892 and in accordance with the said permission, now two storeyed building incurring heavy expenditure have been put up. It is their say that

shortly thereafter the aforesaid resolution i.e. resolution of 12th March, 1999 of respondent no. 3 Municipality being resolution no. 458 for widening the road in question from 28 ft. to 40 ft. was passed and it was resolved that earlier resolution no. 290 dated 4th January, 1960 to be implemented. Against the said resolution, the petitioners preferred Special Civil Application No. 8692 of 1999 before this Court which according to them, is pending. However, the Court made it clear that pendency of this petition would not preclude the State Government from initiating proceedings under the Act for acquisition of the land. It is further stated that respondent no. 2 issued notification on 28th May, 2002 under section 4 of the Act which was published in the Official Gazette on 12th June, 2002 and Gujarat Samachar, a local daily in vernacular language on 30th June, 2002. It was also published in another another daily called 'Sandesh' on 2nd July, 2002. Pursuant to the publication of notification the petitioners filed their objections on 28th July, 2002, 27th August, 2002, 24th February, 2003 and 21st July, 2003. Subsequently on 1st August, 2003 declaration under section 6 of the Act was published wherein it was declared that the land in question was needed for public purpose, namely widening of the road running between Krishna Cinema and Bhamariya Nala in Mehsana town. In view of the same, the petitioners have now approached this Court praying for quashing the proceedings.

4. Both these matters were placed before us in the month of August 2005 and after the matters were considerably heard, drafts of the proposed amendment in the petitions were tendered to challenge the vires of sections 52-A(2) of the Act on the ground that it is ultra-vires, unconstitutional, fraud on the constitution and of no legal effect. The amendment was granted by order dated 9th August, 2005. In view of the same, we directed the office to place both these petitions before the Court taking up hearing of the matters wherein vires of the provisions of any Act have been challenged, since the said business is not assigned to us in the present roster. The petitions were put up for hearing before the concerned Court, but surprisingly, the said challenge to the provisions of section 52-A (2) of the Act was withdrawn as can be seen from the order dated 25th August, 2005 passed by another Division Bench of this Court [Coram : BJ Shethna and MC Patel, JJ.]. That is how these petitions again came up for hearing before us.

5. It is the say of the respondents that case of the petitioners is not true. So far respondent Municipality is concerned, it has stated that the acquisition is for the purpose of widening the road and having examined the pros and cons of the issue, it was decided to acquire land on the western side of the road where the shops of the petitioners are situated. It is the say of respondent Municipality that

there was no ulterior motive on the part of respondent Municipality to acquire land on the western side of the road alone, but that decision was taken keeping in view several factors, which made the process of acquisition easy and less expensive. So far the State is concerned, it has also put up the case on the line of respondent Municipality. All the respondents have denied that the acquisition of one side alone was made with a view to give benefit to some chosen people.

6. We have heard Mr. YN Oza, learned Senior Advocate appearing for Mr. JS Yadav for the petitioners in Special Civil Application No. 13776 of 2003 and Mr. MC Shah, learned Senior Advocate appearing with Mr. MB Parikh for the petitioners in Special Civil Application No. 14094 of 2003. We have also heard Mr. PR Abichandani, Ld. AGP for respondents no. 1, 2 and 4 and Mr. Mehul Sharad Shah, learned advocate for respondent no. 3 Mehsana Municipality. We have carefully perused the record of the petitions. It is an admitted fact that the road running between Krishna Cinema and Bhamariya Nala of the length of about 800 to 1000 mtrs. requires widening considering the increase in traffic in the town of Mehsana. The existing width of the road is 28 ft. which is to be increased to 40 ft. For this purpose respondent no. 3 initially considered the need for widening the road and when it found that it was so needed, it passed resolution which was ultimately confirmed by the Collector – respondent no. 2, but on two occasions it

was required to be reconsidered at the instance of the State Government. Even thereafter the decision to acquire land of the western side of the road i.e. on the side on which the shops of the petitioners are situated was maintained.

6.1. Mr. Oza has submitted that the resolution in question has been passed by the respondent Municipality without application of mind and it has illegally conferred the power to determine the road line and to carry out the survey, etc. on the President of the Municipality alone. It is his submission that when the application was made to respondent no. 2 to challenge the said resolution, he also without giving due consideration to the relevant factors, rejected the application of the petitioners and confirmed the resolution passed by respondent Municipality. Mr. Oza has submitted that the road line cannot be disturbed without following necessary procedure. According to him, when the central line was determined way back on 4th January, 1960 it was not proper for respondent Municipality to acquire land only on one side by refixing the central line. He has submitted that the acquisition of land situated only on the western side is with malafide intention and solely for the purpose of showing favour to a trust, namely Govind Madhav Trust. It is also submitted by him and by Mr. Shah that the Municipality wants to favour certain persons whose properties are situated behind the shops of the petitioners and for that purpose Municipality wants to

remove the shops and widen the road in such manner that the properties of those persons would abut on the road so as to increase their value. It is his submission that the reason that the process of acquisition would become easy if the land on western side is acquired since that would require negotiations with lesser number of persons, is not reasonable and relevant at all. And that has not even approved by the State Government since the matter has been on two occasions remanded for reconsideration to respondent no. 2. Lastly, he has submitted that if the acquisition is on both the sides, that would save at least part of the properties of the petitioners and it may not deprive them of their livelihood.

6.2. So far Mr. MC Shah is concerned, in addition to submission alleging malafides, has raised only law point and has advanced submissions on that aspect. According to him, section 4 of the Act requires publication of preliminary notification only when it appears to the appropriate Government that land in the locality is needed or likely to be needed for any public purpose. He has, therefore, submitted that the satisfaction regarding the need of the land for public purpose has to be that of the Government and not of the Collector. According to him, in the instant case, section 4 notification no-where states that it has appeared to the State Government that the land in question is required for public purpose and if that be so, notification under section 4 becomes invalid and the same is required to

be quashed. He has further submitted that if notification under section 4 is quashed, the entire acquisition proceedings would fall to ground. No other submissions have been advanced by either of the learned counsels for the petitioners.

6.3. As against that, Mr. Mehul Sharad Shah, learned advocate for respondent no. 3 Municipality has submitted that there is no substance in the submission that the acquisition on the western side alone is being made with an oblique motive and to show favour to the aforesaid trust and some people who are having their properties behind the shops of the petitioners. He has further submitted that the need to acquire the land for widening the road is not disputed, but the dispute is only with regard to the decision of respondent no. 3 to acquire land on western side. He has submitted that the said decision has been taken after considering the issue several times and when it is found that the process would become quite easy and involve less expenditure, the same has been taken. He has further submitted that the award under section 11 is made within 2 years of issuance of notification under section 6 and, therefore, it is in consonance with the provisions of the Act. It appears that this submission has been made by Mr. Shah in view of the fact that on earlier occasion i.e. when in the month of August, this matter was heard by us, Mr. Oza had raised submission to the effect that the award

is made after the period of 2 years and, therefore, it is null and void. However, even at that time it was pointed out to Mr. Oza that his computation of the period was not proper and if the period of 2 years was calculated from the date of public notice, then it would be within 2 years and that is permissible under the Act. In view of the same, said contention was not raised by Mr. Oza this time. Mr. Shah has further submitted that as many as 33 petitioners have filed reference with the District Court, which would mean that they do not have any objection to acquisition of the land but the dispute is with regard to the quantum of compensation that has been determined by the Special Land Acquisition Officer. It is his contention that even these persons have accepted the compensation. He has further submitted that the question regarding road line or the central line has been raised for the first time during the hearing and no case has been pleaded in the petition so as to enable the respondents to reply to such contention in the counter affidavit. At this stage, according to Mr. Shah, he cannot be allowed to raise such contention. Lastly, he has submitted that now the process of the acquisition is already over and all the necessary requirements have been fulfilled, there is no need for this Court to quash the acquisition. According to him, these petitions deserve to be dismissed.

6.4. Mr. PR Abichandani, Ld. AGP has referred to the map and has tried

to show to us that even for the sake of convenience of the smooth flow of traffic, acquisition on the western side alone is desirable and if the acquisition is made on both the sides of the road, it will again cause traffic jam at a particular point.

7. So far the first contention of Mr. Oza is concerned, the resolution of respondent no. 3 clearly shows that it has been passed after due deliberation and it was a collective decision of the body to acquire land for widening the road and thereafter, to carry out the process of survey and do the incidental exercise, power was conferred on the President. Therefore, it cannot be said that the entire decision is that of the President and that it is not of respondent Municipality. The said resolution confers power on the President to determine the road line keeping in view the fact that road was required to be widened from 28 ft. to 40 ft. He has been entrusted with the function of carrying out the survey and prepare necessary details regarding the properties falling in the proposed road line and to work out expenditure that may have to be incurred by way of payment of compensation. It, therefore, cannot be said that entire decision has been taken by the President or that these powers cannot be conferred on him. It is true that when the Government remanded the case for the reconsideration of the Collector, it was pointed out to him that he should ascertain whether there was requirement of widening of the road in view of the increasing traffic and whether the acquisition of the land on

both the sides was possible. However, even after considering the said fact, decision to acquire land on the western side was confirmed. Again the matter was referred to the Collector by the State Government directing him to grant hearing to the affected persons and thereafter to take decision. It is the contention of Mr. Oza that when the State Government has time and again asked the Collector to reconsider the decision, it was not open for him to put forward the ground of convenience of negotiations alone for acquiring land of the western side. It is true that initially that was the only matter that had weighed with respondents no. 2 and 3 to acquire land on western side, but later on it is also found that by doing so, comparatively less financial expenditure would have to be incurred. This fact is borne out from the letter of the Government that was shown to us during the course of the hearing from the files which were kept present at the request of learned advocate Mr. Oza for the petitioners. Thus, the entire issue has been considered several times, even from the angle of burden on the public exchequer as also the likely traffic congestion that might be created at certain points if the land is acquired from both the sides of the road and thereafter the road is widened accordingly. Thus, only after exploring all possible alternatives the decision to acquire land on the western side alone has been confirmed and if that is so, it will not be open for us now to judge the legality of said decision and declare it unreasonable and illegal. May be that in the process the petitioners may have to lose their properties,

but when the same is for the public purpose, the role of this Court becomes very limited. Of-course, malafides have been alleged by the petitioners, but the fact remains that the trustees of the said trust have not been joined as party respondents nor the averments have been made in the petition itself. It is not sufficient for the petitioners to show that before the Collector such averments were made. When they have approached this Court by way of a petition under Article 226 of the Constitution of India, they have to incorporate these allegations in the petition on oath and to support such allegations they should produce adequate proof and also the persons against whom such allegations have been made, should be made party respondents. So far Special Civil Application No. 13776 of 2003 is concerned, the trust is not party respondent. Neither the Municipality nor the Collector has been given chance to refute these allegations since no averments have been made in the petition. So far Mr. Oza is concerned, not only no malafides have been alleged against the respondents vis-a-vis the said trust, but it is stated that it was done with a view to save properties of a particular person and few others, which are situated on the eastern side of the road. No details have been furnished even with regard to those persons. Apart from this, it appears to the Court that when the authorities have applied their minds before acquiring the land, genuineness and necessity of such acquisition for widening the road are proved and the petitioners have not adequately spelt out and proved the malafides against such authorities,

the contention based on malafides against the authorities deserves to be rejected. In the case of MOHMADKHAN SHERKHAN PATHAN v/s. STATE OF GUJARAT reported in AIR 1990 Gujarat at page 10, the Division Bench of this Court observed as under :-

> "..... Thus, it is clear that the authorities concerned have applied their mind before they acquired these lands for the purpose of the road. Mr. Joshi, the learned counsel appearing for the petitioner, as a first ground, raised the question of mala fides on the part of the authorities concerned to acquire the lands of the agriculturists, who are poor and who have small pieces of land. The affidavit-in-reply amply provides genuineness of the acquisition and the necessity of such acquisition for forming a straight road, which is nearer and economical. There is absolutely nothing in the petition to spell out mala fides against any of the authorities since there could not have been any ill-feeling or mala fide intention on the part of the authorities concerned to acquire the lands of the petitioners herein. The averments in the petition cannot spell out such mala fides and as such this ground has no substance. ..... "

In the petition of Mr. MC Shah, though it is averred that with a view to favour

Shri Hariprasad Maneklal Jani and Urmila Hariprasad Jani and to facilitate direct access to the road from their land, decision to acquire lands on western side alone is taken. It is difficult to swallow this contention or allegation. To favour two persons and to make access to their easy such acquisition is made. No adequate proof is produced nor they are joined as respondents. Mr. Shah has also not made any emphatic submission on this line, but as stated above, he has restricted the submissions only on the question of law.

7.1. So far Mr. Oza's submission with regard to road line is concerned, again no such averment has been made in the petition and the concerned respondents have not been given any opportunity to meet the said contention. When that is the position, the counsel cannot be allowed to raise such contention at the time of final hearing because that would result into depriving the respondents of valuable right to adequately deal with such submission after laying proper factual foundation in the pleading. In the decision of the Division Bench of this Court rendered in the case of JAYANTILAL AMRATLAL SHODHAN v. F N RANA reported in AIR 1963 Gujarat at page 80, it has been laid down as under :-

> "(4) We propose to take up the second point first inasmuch as the learned Assistant Government Pleader raised a preliminary objection to that point

being urged. The learned Assistant Government Pleader contended that the petitioner had not urged that ground anywhere in the petition and the present petition was not founded upon that ground at all. It was, therefore, contended that the petitioner should not be allowed to raise that point for the first time inasmuch as, thereby, the respondents would be denied the valuable right of meeting that objection which they would have done if the point had been mentioned in the petition. In our judgment, the objection is valid and must be upheld. ...."

8. Thus, we have perused the entire record including the files that were brought by the respondent Government and it appears to us that the acquisition has been for a bonafide public purpose, namely widening of the road and decision of the respondent to acquire the land on western side alone is based on the aspect of convenience vis-a-vis the traffic that may be there after widening of the road, convenience to carry out negotiations and such acquisition would be economical, there would not be any reason for us to intervene with the same. In the opinion of the Court, when the authorities have formed the satisfaction of need to acquire land for public purpose and before taking the necessary decision to acquire the land and commencing the process of acquisition, they have examined all the facets of such acquisition including exploring various alternatives so as to minimize the

hardship that may be caused to the land owners or the owners of the immovable properties standing on lands under such acquisition and thereafter the lands have been acquired after following due process of law it will not be open for the Court to upset the acquisition or in any way interfere with it while exercising jurisdiction under Article 226 of the Constitution of India.

9. This bring us to the legal contentions raised by Mr. MC Shah. It is his submission that the Collector cannot exercise power under section 4 of the Act since it is the satisfaction of the Government in respect of need to acquire land for public purpose ; that is material. He has drawn our attention to the copy of the notification under section 4 of the Act under challenge. He has submitted that wherever the different Governments have thought it fit to confer power to the authority other than the State, necessary amendment in section 4 of the Act has been made. We have perused the same.

10. To appreciate the contention of Mr. MC Shah, we will reproduce sub-section (1) of section 4 of the Act :

> "**4. Publication of preliminary notification and powers of officers thereupon.-** (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public

purpose, or for a company a notification to that effect shall be published in the official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)."

This sub-section, therefore, envisages that if it appears to the appropriate Government that land in any locality is needed or likely to be needed for public purpose, it can get the notification published and initiate the proceedings of acquisition. As stated above, Mr. Shah has emphasized upon the words *"whenever it appears to the appropriate Government"* and has vehemently submitted that it is the satisfaction of the State Government which counts and not that of the Collector. Other procedural functions can be carried out by the Collector but to derive or form the satisfaction is not within his jurisdiction. Firstly, he has invited our attention to the State amendments made by the State of Andhra Pradesh, the State of Karnataka, the State of Kerala and several other States including State of Maharashtra. It is true that these States by amending the Act have authorized other authorities such as "District Collector", "the Deputy Commissioner", "Board

of Revenue", etc. and the necessary words have been inserted after the words "appropriate Government" occurring in sub-section (1). Secondly he has pointed out that so far State of Gujarat is concerned, in section 4 of the Act, no such amendment is made. He has, therefore, submitted that when there is no amendment in the said provision, notification under section 4 in instant case must go as it would be against the mandatory provisions of the Act. We cannot accept the submission of Mr. Shah. By Bombay Land Acquisition Officers Proceedings Validation Act, Act 35 of 1949, as amended by Land Acquisition [Gujarat Unification and Amendment) Act XX of 1965, section 52-A has been provided in the Act, which deals with delegation of power. It has come into effect from 15th August, 1965. Section 52-A reads as under:-

> "52-A. Delegation.- (1) Notwithstanding anything contained in the foregoing provisions, a Collector may, subject to the general or special orders of the State Government, delegate any of his powers or functions under this Act to any officer nor below the rank of a Mamlatdar or to a Land Acquisition Officer specially appointed by the State Government in this behalf.
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> (2) The State Government may by notification in the Official Gazette, direct that the powers exercisable by it under this Act, except the power to

> make rules under Section 55, shall, in such circumstances under such notification, be exercisable also by an officer subordinate to it not below the rank of a Collector."

By sub-section (2) thereof, the State Government has by publishing notification in the Official gazette delegated powers exercisable by it under the Act to an officer subordinate to not below the rank of Collector. In the present case, copy of the notification under section 4 of the Act has been produced. The introductory paragraph thereof reads as under :-

> "No. : U-MKM-8-2002.- WHEREAS by Government Notification, Revenue Department No. AM/78/2094/M/LAQ/1078/1081/LA/IV date 26/10/78 issued under the power conferred by sub-section (2) of Section 52-A of the Land Acquisition Act, 1894 (I of 1894) in its application to the State of Gujarat the power of the State Government to issue Preliminary notification under section 4 except the power to issue Preliminary notification for the Acquisition of Land for the companies under part V-II of the said Act, have been delegated to the Collector of District."

So far the amendment made by the other States in section 4 itself is concerned, most of these amendments have been made prior to this and such amendment, so

far the State of Gujarat is concerned, as stated above, is not there. The State has, however, chosen to have it by a substantive section, namely 52-A. Powers have now been delegated to the Collector by notification dated 26th October, 1978, reference of which is made in the introductory paragraph. When that is so, and when notification in question published under section 4 does in terms state the delegation of power to the Collector, it is his satisfaction with regard to forming opinion regarding the land needed for public purpose; that matters. In our opinion, power has been adequately delegated to the Collector and in exercise of the delegated power the Collector has issued notification under section 4 of the Act.

10.1. Apart from this, even on the facts of the case, it clearly appears that the State Government had minutely considered the proposal of acquisition from all angles including the need for public purpose and has ultimately given green signal to continue the proceedings. The record shows that even after the resolution was passed by the respondent – Municipality it was challenged before the Collector and thereafter on two occasions the matter was taken to th Government and after giving due consideration to the problem the Government referred it back on both the occasions to the Collector for his reconsideration. As stated above, we have perused the file brought before us and we have found that ultimately even the State

Government has expressed the satisfaction regarding the need to acquire the land in question for the public purpose, namely to widen the road. It has also taken into consideration the reasons why on western side alone the acquisition is sought to be made. The objections that have been raised by the petitioners have ultimately not weighed with the State Government also. We have also satisfied ourselves that it is not satisfaction of the Collector alone but it is that of the State Government also. The same is reflected in the declaration made under section 6 of the Act subsequently. In view of the same, we are not inclined to accept the submission of Mr. MC Shah.

11. So far the law on the issues involved in the petitions is concerned, some decisions we have already referred to and there are some more which we may discuss now. In the case of BAJIRAO T. KOTE v/s. STATE OF MAHARASHTRA & ors. The Apex Court has rendered a decision which is reported in (1995) 2 S.C.C. p. 442. In the said case the public trust Sai Baba Sasthan, Shirdi needed the land for the public purpose, namely to connect two temples by a road through the land occupied by the houses sought to be acquired. It was observed by the Apex Court that the Sai Baba Temple at Shirdi is run by a public trust maintaining Sai Baba Temple at Shirdi and other temples and Dharamshala and prayer hall. Thousands of pilgrims daily visit Sai Baba Temple

at Shirdi to pay their homage and seek blessings of the mystic secular saint Shri Sai Baba. Each religion claims that he belongs to their faith but the great saint never proclaimed himself to be of a particular faith. Therefore, all sections of the people in India have great unflinching faith, devotion and absolute belief in him and every day thousands of pilgrims throng Shirdi to pay their homage and seek his blessings. Though physically he is not present, the devotees believe that he is still surviving. After observing the aforesaid, in para. 10 of the judgment the Apex Court has laid down as under :-

> "10. Be that it may, it cannot be gainsaid that providing access to the temples is not a public purpose. The exercise of the power under Section 4(1) of the Act, therefore, is neither colourable nor mala fide. It is true that this Court in Tata Cellular v. Union of India, by a Bench of three Judges, considering the scope of judicial review of the administrative action (grant of licence by tenders) held that the administrative actions of the State or its instrumentalities are amenable to judicial review. As mentioned earlier when the State Governments have exercised the power under Section 4 (1) for a public purpose and the public purpose was mentioned therein, the exercise of the power cannot be invalidated on grounds of mala fides or colourable exercise of power so long as the public purpose is shown and

the land is needed or is likely to be needed and the purpose subsists at the time of exercise of the power. It is primarily for the State Government to decide whether there exists public purpose or not, and it is not for this Court or the High Courts to evaluate the evidence and come to its own conclusion whether or not there is public purpose unless it comes to the conclusion that it is a mala fide or colourable exercise of the power. In other words the exercise of the power serves no public purpose or it serves a private purpose."

11.1. In the decision rendered by the Apex Court in the case of S K GOSAVI v. SPECIAL LAND ACQUISITION OFFICER reported in AIR 1996 S.C. 3169, the Apex Court has held that it is for the Government to take a decision and it is not for the Court to decide as to which place will be more convenient. The Court cannot go into the question of convenience or otherwise and to give its finding in that behalf.

11.2. Thus, when we have found that there is satisfaction of the Government as well as the Collector regarding existence of public purpose, it is not open for us to subject it to judicial scrutiny unless there is mala fide or colourable exercise of power. So far the State Government is concerned, no mala fide or

exercise of colourable power is alleged against it. Whatever that has been alleged against the Collector and the Municipality, as stated above, we have not believed it to be true. In view of the same, it is not open for us to scrutinize the public purpose as well as which will be the land appropriate for acquisition from the points of view of public purpose as also the convenience of property holders likely to be affected by it. The decision on these issues that has been taken by the Collector as well as to which approval has been given by the State Government cannot be, therefore, questioned in such petition by us.

12. In view of the aforesaid discussion, we hardly find any merit in these petitions and they are dismissed with no order as to costs. Rule discharged.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.

The learned advocate for the petitioners requests to stay the judgment of this Court for four weeks. The learned advocates for the respondents have

strongly objected to the same. Having regard to the facts and circumstances of the case, we do not find any reason to stay the implementation of the judgment and the request of the learned advocate for the petitioners is rejected.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.